

LAKE COUNTY BOARD of ADJUSTMENT
October 10, 2018
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Merle Parise, Mary Jensen

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Tiffani Murphy, Lita Fonda

Frank Mutch called the meeting to order at 4:00 pm.

STEPHENSON SETBACK VARIANCE—FINLEY POINT (pm)

Tiffani Murphy presented the staff report. (See attachments to minutes in the October 2018 meeting file for staff report.) She noted that new plans had been submitted this afternoon for the construction of the garage, and answered questions from the board. The complaint mentioned in the staff report came from one of the neighbors. Regarding item d on pg. 13, permit FP 17-05 showed all of the structure outside of the setback area, including the eaves, when it was issued. The applicants partially created the hardship by building into the setback. Regarding the mention in item g on pg. 14 about the neighbor's house being in its setback, most of the properties in the area had some portions of buildings within the setbacks. The majority of the area was developed well before zoning was in place. Regarding item 5 on pg. 9, additions were built around the original 1959 house, which now lay in the center of what was recently constructed.

Regarding attachment 5 and the bump-out for the well, Mary asked how the well would be repaired if that was needed. Tiffani replied if they had to remove portions of the house to do well repairs, this would also require a new permit. Staff would look at the proposal at that time for how they planned to do it and what the finished result would be. Frank thought they'd have to have a hatch in the roof at minimum. Agent Hans Lund said they put it down with a flex line so they could pull it out. It was a shallow well.

Agent Hans Lund said the idea on the bump-out was that it lined up with the garage footing. They wanted to line up the front door with the windows to the lake. That drove the garage to be offset to the left. The well put them in a tight spot. They put the bump-out in rather than making the garage narrower. They wanted to have a two-car garage. He pointed to the existing structure shown on attachment #3 and described features in the design and process. He described for Frank that the eave width was now 2 feet.

Public comment opened: None offered. *Public comment closed.*

Steve thought the variance was reasonable. It was too bad they hadn't applied for the variance when they identified that they were going to bump the garage out and cross over [into the setback]. Hopefully that wouldn't happen again.

Frank commented on the wording of the variance on pg. 9 in #8. If you read about the projections, you could understand that the eaves were a factor. You had to dig [for the information]. When the zoning rules were standardized, if that was a goal, it would be helpful to mention eaves specifically.

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the variance subject to findings of fact and conditions. Motion carried, all in favor.

SMITH SETBACK VARIANCE—EAST SHORE (4:17 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the October 2018 meeting file for staff report.) On pg. 1 in the second paragraph of the property description, he corrected ‘bordering on the east’ to ‘bordering on the west’.

Regarding the top sentence on pg. 9, Clint described for Don that they didn’t have a record of the septic system. The applicants’ site plan showed the location. Jeremy Smith confirmed that it was there.

Clint commented for Merle on the letter with concerns. This was [from] the southern adjacent owner. The setback there would be in compliance. Staff felt the stormwater infrastructure that was put in should adequately mitigate for stormwater issues. In regards to the other criteria, since the lot was created prior to the zoning district, it didn’t have to comply with many of the standards.

Clint confirmed for Steve that this lot had slopes over 25%. These were subtracted from the buildable area. He described the method used to do that. Steve mentioned the guest cabin outside the buildable area that had been included in the calculation. Clint found that the applicant had 2540 square feet of impervious surface and 8800 square feet of buildable area for a calculation of around 28 or 29%.

Jeremy Smith commented that [the staff report] seemed really thorough. He appreciated the neighbor and thought the complaint was well thought out. He didn’t think the variance had to do with that neighbor. It was tight in that area. For the neighborhood, he thought they’d be much happier seeing a garage than all of his junk. It didn’t look so great right now.

Public comment opened: None offered. Public comment closed.

Steve, pg. 14, #2, second line: Change ‘previse’ to ‘precise’.

Motion made by Steve Rosso, and seconded by Don Patterson, to approve the variance with findings of fact and conditions and terms as presented in the staff report. Motion carried, all in favor.

KASKI SETBACK VARIANCE—UPPER WEST SHORE (4:32 pm)

Rob Edington noted Mark and Ulla Kaski were here and presented the staff report. (See attachments to minutes in the October 2018 meeting file for staff report.) He added a recommended condition between the current condition #7 and #8: “No additional impervious

surface coverage and/or improvements within the county right-of-way shall be allowed without additional review and approval from the Board of Lake County Commissioners and the Lake County Road Department prior to the activities taking place.” He mentioned that improvements or structures that might remain within the county road would be a commissioner question and a Roads Dept. question. The commissioners reviewed and approved encroachment permits, which were fairly straightforward.

Rob described for Frank that the applicants were partially within the right-of-way. It looked like the eaves might hang over in the application materials. In his conversations with Jay Garrick (Road Supervisor), they might want to make improvements to Rollins Lakeshore Drive at some point in time. It was currently a single-lane road. This was not part of the old highway. Steve asked if right-of-way was actually the term for this piece of county property. Rob said this was a 30-foot road dedicated per the plat. He deferred as to the correct language. These were referred to as rights-of-way on encroachment permits and by Jay Garrick. For the last survey that identified the location of the property line, Rob turned to attachment 8 from 1997. He spoke about features and history with the attachment. This was probably the most accurate survey they had for this.

Mark Kaski said his eaves were already over the property line. The building was right on the line. The garage to the north was already 2 feet past his line. The steps were another 3 feet past his building. Ulla Kaski said the rock-walled flower bed was in the right of way. Mark added that was part of history. Steve noted the road was 12 or 14 feet wide. Mark added the flower bed was 6 to 8 feet from the road. At Steve’s request, Mark talked about the easement the neighbors had around the back of the Kaski building to access their upper field. It was a 3 ½ feet wide walk path for mowers and wheelbarrows, and was a recorded easement. Ulla mentioned it was very steep. Mary explained it was there because the [properties were] joined at one point. Ulla and Mark said they gave the easement when they sold the place.

Regarding photo 4 on attachment 6, Steve asked about the gap behind the house. Mark clarified the ground there was dirt as opposed to blasted rock. He agreed that it could be excavated more and the house could be moved back a few feet. Steve compared the floor plan of attachment 5 and the site plan of attachment 9. Mark agreed that they were already planning on excavating back into that slope a little bit more. He spoke further about the plans in the attachments and their intentions. They planned to move the house against the dirt and backfill that. They would have to move the house back farther than drawn to keep the eaves and so forth back behind the property line. Steve thought the new house looked like it went back into the hillside 6 or 8 feet more than the other house. Ulla supplied that the old house was 22 feet deep. Steve identified this one as 28 feet.

Returning to the survey, Steve thought they’d want to be sure about the location of the east property line, between the county road and the property, to be sure they weren’t on the county property. Mary asked what would happen when they went to sell the house if the survey wasn’t done. Mark thought that was a very good point. Mark verified for Frank that they had property pins in now. Steve thought it would still be a good idea to have a surveyor verify that those hadn’t been moved and to verify the locations with the current technology.

Public comment opened: None offered. *Public comment closed.*

Changes offered by Steve on pg. 16:

- Condition #2, bullet: Add ‘and supported by a recent survey’ to the end.
- Condition #6: Add ‘easements’ before ‘and aprons’.

Steve also suggested that a 4-foot wide easement should be shown on the site plan rather than a single dotted line, if that was the width of the easement, assuming the easement was surveyed. Frank suggested just a note as an alternative. He checked with the Kaskis, who thought they were okay with the changes.

Motion made by Steve Rosso, and seconded by Merle Paris, to approve the variance with findings of fact and conditions and terms as modified. Motion carried, all in favor.

COLE SETBACK VARIANCE—FINLEY POINT (5:07 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the October 2018 meeting file for staff report.) Clint noted that Roland Redmond, who submitted a comment letter, was present.

Frank turned to photo 2 in attachment 6. Clint clarified that the first two photos were the garage, which the applicants wanted to build up to 26 feet in height total by adding a second level. Mary asked if part of the structure would be demolished. Clint replied that they would keep the same footprint and add an additional level. The eaves would then be higher. Frank asked about the usage of ‘destroy’. Jacob clarified that the use of ‘destroyed’ was the terminology from the ‘existing structure’ section of the zoning.

Clint suggested to mitigate that, they could add a condition saying ‘An existing and proposed site plan/floor plan [shall] be provided before a zoning conformance permit is issued’ to show what exactly was there at the moment. Mary and Steve agreed that was a reasonable and good idea.

Clint outlined for Merle that the dry garage structure was currently being used. He hadn’t seen inside and didn’t know if the usage was for vehicles or storage. No other garages were there. Merle asked if they could put a garage elsewhere on the property and build a guesthouse on this footprint here. Clint said the space for additional impervious surface was limited. They were currently at the [maximum] level of coverage and would have to come back for a conditional use.

Frank asked about the +/-65 feet of lake access mentioned in the next-to-last paragraph on pg. 1. Clint said this meant lake frontage or linear frontage. Jacob pointed to it in attachment 2. Mary said that to her, lake access meant a right-of-way to get to the lake.

Agent Melissa Tuemmler of Carstens & Associates added she was a latecomer to the project. She knew the septic system would not have to be altered. It was sized for the number of bedrooms including this. This would be dry. She confirmed that the drainfield was offsite.

Steve checked if the setbacks on the drawing were right. They were drawn at 20 feet on attachment 2. Steve and Frank discussed this.

Public comment opened:

Roland Redmond said they'd been neighbors to the Coles for 20 years. The Coles were great people. He felt strongly this was a compromised pair of lots with easements. It was difficult to work things out sometimes. The Coles lived in San Diego and were here for 2 to 4 weeks of the year. He lived in Missoula and was here much of the year. When both were here, they stepped on each other's toes. This particular setback encroached on their primary driveway access to their lake property. The access was shown in the photos. It was 15 feet wide, with 7.5 feet to the south towards the Coles and 7.5 feet north towards the Garys' property, which was the wooden rail fence in the photos. If the garage wall was 7.5 feet from their property, it meant the easement touched to the garage wall. This wasn't considering the eaves. Per his letter, the Coles claimed a truck going to his property clipped off the corner of [the eave]. He offered to pay for the repairs. They tried to be good neighbors but this was very, very close. He was glad that Steve picked up on this point.

Roland's preference was to encourage the board to deny the variance but the staff conclusion was okay. He had two issues with the analysis. He thought the likelihood that the existing garage could support a second story was relatively low. It appeared to be slab on grade without foundation or footing. It was an odd shape. To make those spans weight bearing so it could be functional as a garage would be tricky. He thought load bearing would become an issue and the contractor would recommend tearing it down. If a natural disaster wiped out that garage, they'd have to rebuild it within the current setback. In a sense, if this was approved with the conditions as written so far, they might be able to tear down that garage and build a new one on that footprint. He thought if they had to destroy, demolish, rebuild or renovate [to] a certain point, they should have to move it back.

Roland touched on the issue of impervious surface. They could reclaim the ground under the existing footprint to restore pervious surface. As shown on the site plan, they had abundant concrete areas that they used for parking, which could be removed at relatively little cost. Actions could be taken to bring them into compliance with impervious surface limitations. That would make it easier to move the structure within a reasonable setback. He referred to the 7.5 feet that he was entitled to drive upon, and the constraint to the north by Sam Gary's wooden fence. They had to access the property there, and the garage was close.

Roland moved to his second issue. He contested Melissa's comment about the septic and drainfield. This was the original septic tank, built and installed in 1978. The Coles currently had two bathrooms and 3 bedrooms: 2 downstairs and 1 upstairs. The basement area was like a private bedroom and there was a big bunkroom. A lot of people stayed there for several weeks in the summer. From his personal experience on tract A, he didn't think a septic system sized for 1978 would be adequate and the Coles were adding a bedroom. He would be surprised if they could do this without replacing the septic, and the new drainfield would be on his property. He wasn't griping about that—he knew this when he bought the property. This would be a big deal for the applicants. It would tear up the slopes and cause a lot of construction damage. He pointed to staff analysis that the second story would minimize

damage to the slopes and vegetation. He didn't believe that. He hoped they didn't grant the variance. If they did, he asked them to keep in mind that to do this would take a lot of work, effort, expense and digging. There were better ways to do this than by adding a second story to the existing structure.

Frank explained that this board didn't get involved in septic and sanitation issues. Steve pointed to condition #6, which required that Environmental Health Dept. evaluate and approve this, and make sure it was adequate. Frank observed that if the eaves were a problem, getting them raised 8 to 10 feet would solve that problem. Steve and Mary concurred. Roland countered they would be adding people, cars and congestion in a very tight access point. Frank understood that if a contractor started to modify the building, firstly, there could be a footing—the board didn't know. Secondly, the structure would be built adequately to support the snow so there could be internal beefing up. Roland offered to show a picture taken today of excavation around the garage that showed there was no footing, it was slab on grade. Frank said that was the applicants' problem. Roland said he would be more upset if that became his problem as well as the Planning Dept. when the applicant came back and wanted to tear down the garage instead. Frank thought that was covered.

Roland confirmed for Mary that the garage was there when he bought the property in 1998. The Coles purchased in 1993. In response to Steve's questions, Roland described that the lots were created in 1977 or 1978 by the previous owner who'd sold to Sam Gary, the Coles and the Redmonds and gave some history of the lots.

Frank asked what the remedy was if the lot was noncompliant. Jacob said it gave you a hardship. Merle was concerned about the septic system and environmental approval. Who was responsible if the drainfield size had to be increased? The neighbor, Roland, had said he was responsible. Roland clarified that their drainfield would not be big enough to meet current regulations. It was written on the COS (certificate of survey) [that it would expand on his property]. Jacob pointed to the comment from Environmental Health that what this required [was] an alteration permit and verification that there was no laundry room or kitchen; it had to be a dependent guest house. An alteration permit was usually just maybe a new component. It wasn't generally a drainfield expansion.

Roland replied to Frank that from his house, they primarily saw the Cole's house. They could see the Cole's garage from the Redmond dock.

Steve asked if the walls were torn down and the floor was left, how did this work with the rule about destroying an area greater than 60% of the floor area. Jacob responded that when the walls were gone, no floor area was left. It would then be a patio; there was no longer living area. The roof could go away as long as the walls remained. If the walls went away to pour a new slab, then the structure should be brought into compliance. The proposal was to remove the roof and go up. Clint noted the zoning conformance application had been submitted. The site plan was somewhat lacking. The agent was Carstens and Associates. Jacob clarified there was no contractor listed. Steve thought it would be reasonable to let them know this approval allowed for the 7.5-foot setback as long as it was just a remodel, and it didn't fall in the situation where they destroyed more than 60% and had to become compliant. Jacob

thought they'd be allowed to beef up the foundation. They could restructure the walls, but they'd have to remain in place.

Frank, pg. 16, condition #2: Change 'garage structure' to existing garage structure only'.

The group consulted the definition of 'destroy' on pg. 6 of the staff report and talked about it. Jacob noted the definition was bad and would be fixed someday. Jacob responded to Mary that he thought they should be able to remove everything above the top plate but only repair and maintain the walls.

Frank, pg. 16, condition #2: 'If the existing structure needs to be replaced, a new application is required.'

Steve clarified for Roland that the 7.5 feet was from the eave. If they reapplied, they would have to be at least 10 feet from the property line.

Public comment closed.

The board agreed the findings of fact needed adjustment.

Steve, pg. 14, item b, italicized section:

- 3rd line: Delete 'properties' and change 'buildings' to 'building'.
- 4th line: Add ', without modifying any existing structures or impervious surfaces,' after 'location'.

Steve, pg. 14, item d, italicized section:

- 4th line: Add 'the' between 'purchased' and 'lot'.
- 5th line: Add 'adoption of' before 'the Finley' and add 'regulations' after 'District'.

Steve, pg. 14, item e, italicized section, 5th line: Change 'would' to 'could'.

Steve and Frank, pg. 15, end of item f: Add a statement to the end of item f, not indented or given a roman numeral, saying, "The granting of the variance may reduce the impact on neighboring properties by raising the eave of the structure."

Steve, pg. 15, item g:

- 3rd line: Change 'would' to 'could'.
- 5th line: Add 'if other modifications and existing structures or impervious surfaces are not made' after 'coverage'.

Steve, pg. 16:

- Condition #3: Change first word from 'A' to 'As'.
- Condition #3, last bullet: Add 'other' between 'from' and 'property'.
- Condition #4, 2nd line: Change 'use, prior' to 'use permit. Prior'.
- Condition #4, 1st line: Add 'new' prior to 'conditional'.
- Condition #4, end of 2nd line: Change 'previse' to 'precise'.

Roland asked what happened if there wasn't 7.5 feet. Steve interpreted that as being found in a resurvey. Jacob said they would have multiple issues.

Motion made by Frank Mutch, and seconded by Mary Jensen, to approve the variance subject to the changes made in the findings and conditions and terms. Motion carried, all in favor.

MINUTES--Deferred

OTHER BUSINESS (6:03 pm)

Signs were briefly mentioned.

Jacob checked about inclusion or exclusion of applicable regulations in the staff report.
Board members were fine with exclusion, with members having current copies of regulations.

Frank Mutch, chair, adjourned the meeting at 6:07 pm.